

STATE OF TENNESSEE

PUBLIC CHAPTER NO. 451

HOUSE BILL NO. 2326

By Representatives McDonald, Mike Turner, Harmon

Substituted for: Senate Bill No. 2286

By Senators Kyle, Barnes

AN ACT to amend Tennessee Code Annotated, Section 54-21-104 and Section 54-21-105, relative to permits for outdoor advertising devices and sanctions for failure to comply with the Billboard Regulation and Control Act of 1972.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 54-21-104, is amended by inserting the following language after the second sentence of subsection (b):

The commissioner shall use best efforts to process an application for a permit, in accordance with the rules of the department of transportation, within no greater than one hundred and eighty (180) days after a completed application is received.

SECTION 2. Tennessee Code Annotated, Section 54-21-105 is amended by inserting the following language after the second sentence of subsection (b):

For good cause shown, the commissioner may extend the thirty (30) day period for remedial action for up to an additional one hundred and fifty (150) days, so long as all advertising content is removed from the unlawful device within the thirty (30) day period. If advertising content is placed on the device during any extended period, the device may be immediately removed by the commissioner without further notice.

SECTION 3. Tennessee Code Annotated, Section 54-21-105 is further amended by adding the following new subsections:

(c)(1) In addition to any other action authorized in this section, the commissioner shall not issue or transfer any outdoor advertising permit(s) or tag(s), or issue annual renewal permit(s) for any existing outdoor advertising device(s), subject to the limitations set forth in subsection (c)(5), to any person who has erected a new outdoor advertising device at a new location without first obtaining a permit and tag as required under § 54-21-104, or issue any permit(s) or tag(s) to any other person acting in affiliation with such person, until either:

(A) The person has removed the unlawful outdoor advertising device within the time period established in the notice given by the department, or any extension thereof, as provided in subsection (b); or

(B) In the event the department has removed the device, the person has made full payment to the department in the amount of three (3) times the cost of removal, as well as payment of any other fees, costs or damages, as provided in subsection (b).

(2) Solely for the purpose of applying and enforcing the sanctions established in this subsection (c):

(A) The term “acting in affiliation with” means any person who, with respect to any violation and/or request for a permit or tag as described in subsection (c)(1), acts in concert with, or under the direct or indirect control of, or who has the power to control, any person who has erected an outdoor advertising device in violation of this subsection (c); and

(B) The term “new outdoor advertising device” means any such device erected on or after April 1, 2009; and

(C) The term “new location” means any location adjacent to a highway on the interstate system or primary system and subject to regulation by the department as provided in this chapter for which the person erecting an outdoor advertising device does not then possess a current permit issued by the department for each sign face of the device; provided, however, that the sanctions established in this subsection (c) shall not apply if the person erecting a new outdoor advertising device then possesses a current permit from the department for each sign face of the device at a different location on the same side and at the same log mile of the highway where the new device is erected, but the person either has failed to erect the device at the actual permitted location or has removed a device from the permitted location.

(3) This subsection (c) shall not apply to any existing outdoor advertising device that, at the time it was erected, did not require a permit from the department under this chapter, even though such device may subsequently require a permit from the department due to changed conditions at the location or within the vicinity of such device.

(4) The additional sanctions provided in this subsection (c) shall not apply to a person who purchases an unlawful outdoor advertising device subsequent to its erection, so long as the person purchasing such device did not erect the device or act in affiliation with the person who erected the device.

(5)(A) The commissioner shall not apply this subsection (c) as cause for refusing to issue an annual renewal permit to any person prior to the expiration of one hundred eighty (180) days from the date of initial notice of violation given to such person pursuant to subsection (b).

(B) Under this subsection (c), non-renewal of any person’s existing permits for outdoor advertising devices shall be applied on a graduated basis based on the number of violations as provided herein. Each separate outdoor

advertising structure erected without a permit shall be considered a separate violation. The department shall choose, in its absolute discretion, which existing permits shall be subject to non-renewal and voiding.

(i) For the first violation of erecting an outdoor advertising device without a permit, the person shall forfeit the same number of permits as the number of unlawful sign faces on the unpermitted device (i.e., one (1) permit for a one unlawful sign face, two (2) permits for two (2) unlawful sign faces, etc.).

(ii) For the second violation, the person shall forfeit twice the number of permits as the number of unlawful sign faces on the unpermitted device.

(iii) For the third and any subsequent violation, the person shall forfeit four (4) times the number of permits as the number of unlawful sign faces on the unpermitted device.

(6) In the event that an existing outdoor advertising device is not issued an annual renewal permit in accordance with this subsection (c), after notice has been given in accordance with subsection (b), the permit for such existing device shall be voided, subject to the opportunity for a contested case hearing in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and the device shall be subject to removal as an unlawful outdoor advertising device by any means authorized in § 54-21-105.

(7) All gross revenues received or payable from the operation of any outdoor advertising device erected without first obtaining a permit as required under § 54-21-104 are subject to being forfeited to the state and placed in the highway fund for the administration of this chapter or any other purpose authorized under § 54-21-106. For the enforcement of this provision, the department may file a petition in the chancery court for the county in which the unlawful outdoor advertising device is or was located, or in the county where the person erecting such device resides. In such case, the jurisdiction of the chancery court shall be limited solely to the authority to issue appropriate orders for the enforcement of this subsection (c)(7), including without limitation the authority to establish a constructive trust for an accounting and receipt of revenues obtained from the operation of the unlawful outdoor advertising device.

(8) The provisions of this subsection (c) shall be construed to accomplish the purposes of this section both to deter unlawful conduct and to prevent any person from benefitting from unlawful conduct or evading the sanctions authorized herein. The sanctions authorized in subsection (c) shall not be construed to apply in any circumstance other than as expressly authorized by the general assembly herein.

(d) Notwithstanding any other provision of law to the contrary, in any case or controversy arising from any regulatory or enforcement action taken by the commissioner or department under § 54-21-105 or this chapter, wherein any cause of action, claim, counterclaim, cross-claim, or any other claim or request for remedy whatsoever is asserted against the state, the commissioner, the

department, or any official or employee thereof, jurisdiction shall be vested exclusively in the chancery court for Davidson County; provided, that any contested case hearing with respect to the issuance, denial, non-renewal, or voiding of any outdoor advertising permit shall remain under the jurisdiction of the commissioner in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(e) It shall be no defense to any enforcement action taken under § 54-21-105 that the person who erects or operates an outdoor advertising device without first obtaining a permit and tag as required under § 54-21-104 may then have a pending contested case proceeding under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, in which such person's entitlement to a permit for the outdoor advertising device is at issue.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: June 8, 2009



KENT WILLIAMS, SPEAKER
HOUSE OF REPRESENTATIVES



RON RAMSEY
SPEAKER OF THE SENATE

APPROVED this 23rd day of June 2009



PHIL BREDESEN, GOVERNOR